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10. Trial (§ 154*)—Demurrer to Evidence—Statement of Evidence.—The practice of inserting in demurrers to evidence the proceedings at the trial verbatim is not to be commended, on account of the unnecessary expense to litigants and the unnecessary labor it imposes upon courts in the examination of cases, but the old practice of stating the substance of the material oral evidence is the better one, and should be encouraged.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 351; Dec. Dig. § 154.*]

11. Exceptions, Bill of (§ 16*)—Contents—Statement of Evidence.—The practice of inserting in bills of exceptions the proceedings at the trial verbatim is not one to be commended, on account of the unnecessary expense to litigants and the unnecessary labor it imposes upon courts in the examination of cases, but the old practice of stating the substance of the material oral evidence is the better one, and should be encouraged by the courts.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. § 17; Dec. Dig. § 16.*]

12. Trial (§ 154*)—Demurrer to Evidence—Joinder of Issue on.—Where defendant demurs to plaintiff's evidence, plaintiff should not be required to join in the demurrer until a statement of the evidence is set out in the demurrer.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 353; Dec. Dig. § 154.*]

13. Appeal and Error (§ 1064*)—Review—Harmless Error—Invading Province of Jury.—In an action for injuries caused by being struck by a street car, the assumption of the fact that the road on which the accident occurred was a public road was not prejudicially erroneous, where there was no evidence tending to show that such road was not a public road.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4221; Dec. Dig. § 1064.*]

NORFOLK & W. RY. CO. *v.* RHODES.

Jan. 14, 1909.

[63 S. E. 445.]

1. Carriers (§ 318*)—Injuries to Passengers—Res Ipsa Loquitur.—The derailling of a train by collision or otherwise is prima facie evidence of negligence of the carrier as to a passenger.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1311, 1312; Dec. Dig. § 318.*]

2. Carriers (§ 318*)—Injuries to Passengers—Unusual Movement of Train—Res Ipsa Loquitur.—Where the movement of a train so un-

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

usual and extraordinary, as to break a passenger loose from his hold on the water-closet in the car, and of such a nature that the accident could not have happened without negligence, a prima facie presumption of negligence arises.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1307-1314; Dec. Dig. § 318.*]

3. Appeal and Error (§ 536*)—Bill of Exceptions—Identification of Evidence—Sufficiency.—A statement in a bill of exceptions that all of the evidence introduced, both for plaintiff and defendant, is found in a typewritten booklet marked "A," and is adopted by the court as the evidence introduced, and the court certifies that the booklet A contains all the evidence offered by the parties, and concluding with the statement that, to the action of the court in refusing to set aside the verdict the defendant excepted and prayed that "this its bill of exceptions might be signed, sealed, and made a part of the record, which is accordingly done," sufficiently identified the evidence, and made it a part of the record.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 536.*]

4. Carriers (§ 280*)—Injuries to Passengers—Carrier as Insurer of Passenger's Safety.—Though a carrier is liable for injuries to a passenger resulting from the slightest negligence on its part, it is not an insurer of his safety against all contingencies except those arising from the act of God and the public enemy, as are carriers of goods; and for an injury happening to the person of a passenger without fault on the carrier's part it is not responsible.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1085; Dec. Dig. § 280.*]

5. Carriers (§ 316*)—Injuries to Passengers—Presumptions.—In order to recover against a carrier for injuries to a passenger, it is always necessary to prove negligence, either directly, or by evidence of facts from which it may be reasonably presumed.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1283; Dec. Dig. § 316.*]

6. Carriers (§ 297*)—Carriage of Passengers—Assumption of Risks by Passenger.—The lurching or rocking of trains in passing rapidly over curves on the road, resulting from the natural laws of motion, cannot be prevented, and is one of the risks which a passenger assumes.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1204; Dec. Dig. § 297.*]

7. Carriers (§ 318*)—Injuries to Passenger—Evidence—Sufficiency.—In an action for injuries to a passenger, caused by being thrown to

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

the floor while standing in a train without holding on to anything, the mere expression of opinion by plaintiff and one of his witnesses that the rocking or lurching of the train when plaintiff was injured was unusual and extraordinary was insufficient to show negligence on the part of defendant, where the witness testifies to no facts showing that it was unusual or extraordinary, as the mere fact that plaintiff was thrown to the floor did not show that the movement of the train was unusual.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1307, 1309, 1310; Dec. Dig. § 318.*]

8. Carriers (§ 318*)—Injuries to Passenger—Evidence—Sufficiency.

—In an action for injuries to a passenger, evidence held insufficient to show negligence of defendant.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. § 318.*]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date and Reporter Indexes.